IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL NO.772 OF 1998
IN
SUIT NO.1357 OF 1992

Pradeep Krishnaji Lotlikar
Indian Inhabitant, residing at
Bhagwati Niwas, Ground floor,
Natwar Nagar, Road No.4,
Jogeshwari (East), ..Appellant.
Mumbai 400 060. (Orig. Plaintiff)

Vs.

1. K.B. Joshi, Chief Promoter,
   Indian Inhabitant, residing at
   Railwaymen's Apna Ghar Co-operative
   Housing Society Ltd. (Proposed)
   136, 'Shiv Tirth', Dr. M.B. Raut Road,
   Shivaji Park, Bombay 400 028.

2. M. K. Panchal,
   Indian Inhabitant, residing at
   Haribag, 1st floor, Room No.1,
   Sun Mill Road, Lower Parel, ..Respondents.
   Bombay 400 012. (Orig. Defendants)

(Orig. Defendants)

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Shri. N. Y. Gupte for the Appellant.
None for the Respondents.

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CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

25th January, 2007.

ORAL JUDGMENT (Per DR. D.Y. CHANDRACHUD, J.). :

1. The Appellant is the Plaintiff in a suit instituted before this Court seeking a decree against the First Defendant for specific performance of an agreement dated 11th July, 1985 which has been registered with the Sub-Registrar of Assurances. In pursuance of the agreement the Plaintiff seeks possession of Flat No. 301 in building 'J' of Railway Men's Apna Ghar Co-operative Housing Society Limited (proposed). The case of the Appellant is that in pursuance of the agreement, by the end of the year 1987 he had paid 92% of the total sale consideration amounting to Rs.1,09,250/-. The First Defendant has been sued in his capacity as the Chief Promoter of the proposed co-operative housing society. The suit was instituted on 5th May, 1992 inter alia after the Appellant learnt that the First Defendant had entered into an agreement with the Second Defendant in respect of the same flat that formed the subject matter of the agreement with the Appellant. By the order of the Learned Single Judge that is impugned in these proceedings, the suit has been dismissed on the ground that

a co-operative society has been registered under the Maharashtra Co-operative Societies Act, 1960; that the business of the housing

society consists of the allotment of flats to its members and since the subject matter of the suit touches the business of the society, the exclusive jurisdiction to entertain and try the subject matter of the dispute would vest in the Co-operative Court under Section 91 of the Maharashtra Co-operative Societies Act, 1960.

2. On behalf of the Appellant it has been submitted that the suit against the First Defendant was instituted before the registration of the co-operative society to enforce the obligations of the First Defendant to the suit as a promoter under Section 4 of the Maharashtra Ownership of Flats Act, 1963. The First Defendant it was submitted is a promoter within the meaning of the Act and a suit for the enforcement of the obligations of a promoter under the Act would not be defeated by the subsequent registration of a co-operative Society. The Respondents have remained absent in these proceedings. Having heard counsel appearing for the

Appellant, we find merit in the Appeal. The suit in the present case was instituted much prior to the formation of the co-operative society. The Appellant seeks enforcement of the rights which he claims to have enured in his favour under the agreement dated 11th July, 1985 and the corresponding obligations cast upon the First Respondent under the Maharashtra Ownership of Flats Act, 1963. Such a suit before the Civil Court would not be barred by the provisions of Section 91 of the Maharashtra Co-operative Societies Act, 1960. The Appellant seeks the enforcement of the obligations of the First Respondent as promoter. The Appellant is in fact not a member of the society at all. In these circumstances, the subsequent formation and registration of the co-operative society would not be decisive of the right of the Appellant to pursue the suit against the promoter who is the First Defendant and the subsequent purchaser, who is the Second Defendant in the suit.

3. In these circumstances, the Appeal is allowed. The order of the Learned Single Judge dated 15th June, 1998 is set aside and the suit is restored to file. However, it is clarified that all

the observations contained in the present order are confirmed to the disposal of the question as regards the maintainability of the suit and shall not be reflective of any observations by the Court on the merits of the rival contentions of the parties.

4. The interim order that operated in these proceedings since 14th September, 1998 shall continue to remain in force for a period of three months from today so as to enable the Appellant to move the Learned Single Judge for appropriate interim reliefs during the pendency of the suit.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)